

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

UNITED STATES OF AMERICA)	
)	Criminal No.: 3:00-CR-400-P
v.)	
)	Judge Jorge A. Solis
MARTIN NEWS AGENCY, INC.; and)	
BENNETT T. MARTIN,)	
)	FILED: May 25, 2001
Defendants.)	

MEMORANDUM IN SUPPORT OF MOTION
FOR PRODUCTION OF RECIPROCAL DISCOVERY
PURSUANT TO FEDERAL RULE OF CRIMINAL PROCEDURE 16(b)

I
LAW AND ARGUMENT

A. THE UNITED STATES HAS COMPLIED WITH RULE 16(a)

Rule 16(b) of the Federal Rules of Criminal Procedure provides that if the defendants request disclosure under Rule 16(a), upon the government's compliance with such request, the defendants shall disclose to the government:

(A) . . . books, papers, documents, photographs, tangible objects, or copies or portions thereof, which are within the possession, custody, or control of the defendant and which the defendant intends to introduce as evidence in chief at trial.

(B) . . . results or reports of physical or mental examinations and of scientific tests or experiments made in connection with the particular case, or copies thereof, within the possession or control of the defendant, which the defendant intends to introduce as evidence in chief at the trial or which were prepared by a witness whom the defendant intends to call at the trial when the results or reports relate to that witness' testimony.

Fed. R. Crim. P. 16(b)(1)(A) and (B).

The United States has fully complied with its discovery obligations under Rule 16(a). Defendant Bennett T. Martin filed a Motion for Production and Discovery Pursuant to Rule 16 on October 25, 2000. Defendant Martin News Agency, Inc. (“Martin News”) did not file a discovery motion pursuant to Rule 16, but the United States has fully complied with its discovery obligations under Rule 16 with respect to Martin News. In accordance with the Court’s amended pretrial scheduling order dated November 27, 2000, the United States made available to the defendants in Dallas by February 12, 2001 all discoverable documents, as well as statements discloseable to Defendant Martin News under Rule 16(a)(1)(A), all Brady and Giglio information in the possession of the United States, and a summary of the FBI’s criminal records check of the defendants.

Although defendants’ original Rule 16 discovery motion did not include a request under subdivision (a)(1)(E) for a summary of expert testimony, defendants raised the issue in their Motion for Disclosure of Records or Report Relating Facts or Data Underlying Expert Opinions and Incorporated Memorandum of Law. In its response to that motion, filed on April 30, 2001, the United States complied with Rule 16(a)(1)(E) by stating that the United States presently does not intend to introduce expert testimony. Response of the United States to Defendants’ Motion for Disclosure of Records or Reports Relating Facts or Data Underlying Expert Opinions and Incorporated Memorandum of Law, p. 3.

B. THE DEFENDANTS WERE ORDERED TO COMPLY WITH RULE 16(b) BY FEBRUARY 26, 2001

The Court’s amended pretrial scheduling order dated November 7, 2000, required the defendants to provide all reciprocal discovery to the government by February 26, 2001. This

scheduling order was based on the defendants' unopposed motion to amend the original pretrial scheduling order, in which the defendants themselves suggested the February 26, 2001 deadline. The defendants did not provide reciprocal discovery by February 26, as ordered by the Court.

In a letter dated February 22, 2001, Richard A. Anderson, counsel for Defendant Martin News Agency, Inc., advised attorneys for the United States that he was not going to be able to provide reciprocal discovery by the February 26, 2001 deadline. See attached. Mr. Anderson represented in that letter that he would try to comply with the reciprocal discovery requirements of Rule 16 prior to the date defendants' pretrial motions were due. Defendants' pretrial motions were due and were filed on March 16, 2001. As of May 24, 2001, the United States has still not received reciprocal discovery from the defendants. It has been more than two months since the date by which defendants stated they would provide the discovery, and more importantly, the defendants have missed the date set in Court's scheduling order for reciprocal discovery by more than three months.

II
CONCLUSION

Accordingly, the United States now moves this Court for an order requiring the defendants to produce to the government before trial, for inspection and copying, all documents and materials called for under Rule 16(b).

Respectfully Submitted,

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